



**New York State Bar Association
Committee on Professional Ethics**

Opinion 1262 (12/14/2023)

Topic: Recognition of lawyer on not-for-profit organization's website

Digest: A lawyer may pay for an advertisement on the website of a not-for-profit organization that provides online medical information for victims of toxic chemicals. Separately, the lawyer may make a financial contribution to the not-for-profit organization in exchange for the organization's agreement to list the lawyer as a "sponsor" on the organization's website. But the lawyer may not make a financial contribution to the organization in exchange for the organization's agreement to list the lawyer on a page that discusses legal options for victims of toxic chemicals, because such a listing would constitute a prohibited "recommendation" in exchange for something "of value."

Rules: 1.0(a), 7.1(a) & 7.2(a)

FACTS:

1. Inquirer is a lawyer who represents alleged victims of toxic chemicals in personal injury lawsuits. A not-for-profit organization is publishing a website with medical information for victims of toxic chemicals. Inquirer tells us it would be advantageous for their law practice to be identified on the website as a financial supporter or "sponsor" of the organization, because some alleged victims of these toxic products who visit the organization's website may not yet be represented by counsel for a potential personal injury lawsuit.

2. Specifically, in exchange for Inquirer's financial donation: (i) the organization's website would acknowledge the Inquirer's practice on a page headed "Thank you to our Sponsors" (or similar words); (ii) the organization would list Inquirer's practice on a page that discusses legal options for victims; and (iii) Inquirer will make an additional payment to place an advertisement on the page discussing legal options for alleged victims. Neither Inquirer nor any employee of Inquirer's law firm will serve as an officer or director of the organization.

QUESTIONS:

Inquirer poses three questions:

3. May a lawyer pay for an advertisement on the not-for-profit organization's website?
4. May a lawyer agree to be acknowledged as a "sponsor" of the not-for-profit organization's website in exchange for making a financial contribution to the organization?
5. May a lawyer agree to be listed on the not-for-profit's website as a resource for alleged victims of toxic chemicals in exchange for a financial contribution to the not-for-profit organization?

OPINION

The three questions raise issues regarding advertisements, sponsorships, and recommendations. We will cover these issues one by one.

Advertisements

6. The first question is whether a personal injury lawyer may pay for an advertisement on a not-for-profit organization's website. Our answer is yes, as long as the advertisement complies with the New York Rules of Professional Conduct (the "Rules"). Nothing in the Rules imposes restrictions on where a lawyer may advertise.

7. The advertisement would thus have to comply with Rule 7.1(a), which prohibits lawyers from disseminating any advertisement that "contains statements or claims that are false, deceptive or misleading" or that "violates a Rule." If the Inquirer complies with Rule 7.1(a), then a permitted method of advertising would include the Inquirer's advertisement on an organization's website. Cf. N.Y. State 915 (2012) ("Assuming relevant advertising rules are adhered to, a law firm's website may link to the website of a nonlegal entity, and vice versa.").

Sponsorships

8. The second question is whether a personal injury lawyer may contribute financially to a not-for-profit organization in exchange for the organization's agreement to acknowledge the lawyer as a "sponsor" on the organization's website. Specifically, if the lawyer makes a donation to the organization, the lawyer will be listed on the organization's website on a page headed "Thank you to our Sponsors" (or words to that effect). We see nothing in the Rules that would prohibit this arrangement. Many law firms sponsor not-for-profit organizations and activities. The sponsorship of not-for-profit organizations and activities can have positive effects and in the appropriate circumstances should be encouraged. However, the sponsorship should not involve the organization's additional commentary regarding the quality, effectiveness, suitability, etc., of the sponsor.

9. Even though a lawyer may sponsor a not-for-profit organization, the question arises whether the organization's listing of the lawyer as a sponsor of the not-for-profit organization in exchange for a financial contribution would constitute an "advertisement" that would be subject to the Rules governing advertising. We will now analyze that question.

Rule 1.0(a) defines the term "advertisement." It says:

"Advertisement" means any public or private communication made by or on behalf of a lawyer or law firm about that lawyer or law firm's services, the primary purpose of which is for the retention of the lawyer or law firm. It does not include communications to existing clients or other lawyers.

10. A lawyer who agrees to be listed as a sponsor in exchange for a financial contribution to an organization appears to satisfy at least two of the four components of the definition of an "advertisement" – the listing is (i) a "public ... communication" that is (ii) "by or on behalf of a lawyer" We do not reach the third element (i.e., whether the listing is "about the lawyer or law firm's services") because we believe that the listing will generally not satisfy the fourth element, which is that the "primary purpose" is "for the retention of the lawyer or law firm." A communication does not fall within the definition of an "advertisement" unless it meets all four of the elements set out in Rule 1.0(a).

11. Sponsorships of non-profit organizations are common and generally indicate support of the organization and, to the extent they serve a professional purpose, they serve to promote general brand awareness. Comment [8] to Rule 7.1 draws a distinction between general marketing and branding, on one hand, and advertisements for purposes of the Rules, on the other hand. Specifically, Comment [8] says:

[8] ... Some communications by a law firm that may constitute marketing or branding are not necessarily advertisements. For example, pencils, legal pads, greeting cards, coffee mugs, T-shirts or the like with the law firm name, logo, and contact information printed on them do not constitute “advertisements” within the definition of this Rule if their primary purpose is general awareness and branding, rather than the retention of the law firm for a particular matter.

12. We relied on Comment [8] in N.Y. State 937 ¶ 4 (2012), where we concluded that a lawyer who provided a promotional gift with the law firm’s logo in a local hospital welcome package was not engaged in advertising. We explained that “when the intent of a communication is ... to raise general brand awareness, that intent will be considered its primary purpose.” Thus, “even if such communications are more fundamentally motivated by the aim of increasing a lawyer’s business, they are not advertising within the meaning of the Rules.”

13. Like the promotional gift in N.Y. State 937, a law firm sponsorship of a not-for-profit organization, a social service organization, or a similar organization aims to increase “general brand awareness” of the law firm. Such a sponsorship may also have the purpose of supporting an organization because the law firm believes in the organization’s mission and wants to be associated with that mission. While such purposes may have the overall aim of increasing a lawyer’s business, they do not demonstrate that the “primary purpose” of the sponsorship “is for the retention of the lawyer or law firm.” Accordingly, a sponsorship – without more – is not an “advertisement” within the meaning of the Rules.

Recommendations

14. The Inquirer’s financial contribution to the organization will also entitle him to be listed on a page of the organization’s website that discusses legal options for victims. In our view, this implicates Rule 7.2 (“Payment for Referrals”). The relevant paragraph is Rule 7.2(a), which provides as follows (with exceptions not relevant here):

(a) A lawyer shall not compensate or give *anything of value* to a person or *organization to recommend* or obtain employment by a client, or as a reward for having made a recommendation resulting in employment by a client [Emphasis added.]

15. When an organization’s website lists sponsors of the organization, that alone does not constitute a “recommendation” within the meaning of Rule 7.2(a). But if, as here, the organization separately lists (or otherwise singles out) the names of contributing lawyers or law firms who represent victims of toxic chemicals, we believe that the listing rises to the level of a recommendation. Thus, making a financial contribution to an organization in exchange for being listed on a resource page as a lawyer who serves victims of specified products violates Rule 7.2’s edict that a lawyer “shall not compensate or give anything of value to a person or organization to recommend ... employment by a client” Cf. N.Y. State 1132 (2017) (a lawyer may not pay a “marketing fee” to an entity if the fee includes “an improper payment for a recommendation”).

16. We recognize that in N.Y. State 908 (2012) we said that an attorney could ethically appear

as a “featured attorney” on the home page of the website of a local bar association to which the attorney belonged. There, however, our approval applied only if the home page contained an appropriate disclaimer stating that the featured attorney had been randomly selected and was neither being endorsed nor recommended by the association over any other attorney. The situation before us now is different because (i) Inquirer here would not be randomly selected but would be listed on the organization’s website because he made a financial contribution to the organization, and (ii) the organization’s inclusion of Inquirer on a list of lawyers who serve victims of certain products impliedly recommends the lawyer. The combination of a financial contribution to an organization in exchange for an implied recommendation from the organization contravenes the prohibition in Rule 7.2(a).

CONCLUSION

17. A lawyer may pay for an advertisement on the website of a not-for-profit organization. Separately, a lawyer who makes a financial contribution to a not-for-profit organization in exchange for the organization’s agreement to list the lawyer as a “sponsor” on the organization’s website is not engaging in advertising within the meaning of the Rules. But the lawyer may not make a financial contribution to the organization in exchange for the organization’s agreement to list the lawyer on a page that lists or discusses legal options for victims of toxic chemicals.

(11-23)